



**THE APPOINTMENT, RIGHTS AND DUTIES OF
ELECTION CHALLENGERS
AND POLL WATCHERS**

Michigan Department of State
Bureau of Elections
September, 2003

www.Michigan.gov/sos

The Appointment, Rights and Duties of Election Challengers and Poll Watchers

Allowances are made in law to permit “election challengers” and “poll watchers” to monitor the election process as a protective safeguard against election fraud. Challengers, appointed by political parties and qualified groups and organizations, enjoy special rights and privileges. While poll watchers are not extended the same rights and privileges, there is no appointment process associated with the placement of poll watchers in the polls or absent voter counting boards.

This publication is intended as a summary of the laws and rulings which govern election challengers and poll watchers; it is not intended as a complete interpretation of the law. Questions may be directed to the Michigan Department of State, Bureau of Elections, P.O. Box 20126, Lansing, Michigan 48901. Phone: (517) 373-2540. Fax: (517) 241-4785.

ELECTION CHALLENGERS

Election challengers may be appointed by:

- A state-recognized political party.
- An incorporated organization.
- An organized group of citizens interested in the adoption or defeat of a proposal on the ballot.
- An organized group of citizens interested in preserving the purity of elections and in guarding against the abuse of the elective franchise.

It merits note that a candidate does *not* have the authority to appoint challengers. Similarly, a Candidate Committee registered under Michigan’s Campaign Finance Act or any other type of organization expressly formed to support or oppose a candidate does *not* have the authority to appoint challengers.

Election challengers have the right to:

- Observe the election process in voting precincts and absent voter counting board precincts.
- Challenge a person’s right to vote if the challenger has *good reason to believe* that the person is not eligible to vote in the precinct.
- Challenge the actions of the election inspectors serving in the precinct if the challenger believes that election law is not being followed.

GENERAL INFORMATION

- A challenger must be a registered voter in the State of Michigan.
- A challenger may *not* be a candidate for any elective office in the election. (Exception: a candidate for precinct delegate may serve as a challenger in a precinct other than the precinct in which he or she is a candidate.)
- A person appointed as an election inspector at the election may not act as a challenger at any time throughout the course of the day.
- A challenger may be assigned to serve in any precinct or absent voter counting board established in the state. In addition, a challenger may be assigned to serve in any number of precincts.
- A political party, group or organization may not have more than *two* challengers present in a voting precinct or more than *one* challenger present in an absent voter counting board at any time throughout the course of the day.
- A political party, group or organization may rotate challengers assigned to a voting precinct; a challenger assigned to an absent voter counting board must remain in the room in which the absent voter counting board is working until the close of the polls (8:00 p.m.).
- All challengers must carry an identification card issued by the appointing political party, group or organization. The identification card must show the challenger's name; the name of the appointing political party, group or organization; and the precinct or precincts in which the challenger is authorized to serve. It is recommended that challengers wear an identification badge which bears the words "ELECTION CHALLENGER." Upon entering a precinct, the challenger must exhibit the identification card to the precinct chairperson.
- A challenger appointed to serve in an absent voter counting board is required to take and sign the following oath: "I (name) do solemnly swear (or affirm) that I shall not communicate in any way information relative to the processing or tallying of voters that may come to me while in this counting place until after the polls are closed." The oath may be administered by any member of the absent voter counting board.

THE APPOINTMENT OF ELECTION CHALLENGERS

Political parties may appoint election challengers to serve at partisan and nonpartisan elections. The appointments may be made at any time through the date of the election. A political party is *not* required to follow an application process to appoint election challengers.

An incorporated organization, a group interested in the adoption or defeat of a proposal on the ballot or a group interested in preserving the purity of elections and in guarding against the abuse of the elective franchise may appoint election challengers if authorized to do so under an application process. To apply for appointment authorization, the organization or

group must file, *not less than 20 days nor more than 30 days prior to the election*, the two items listed below with the clerk of the county, city, township or village where the election will be held. (If a school election, the filing is made with the secretary of the school board.)

- 1.) A statement which sets forth the organization's or group's intention to appoint election challengers and the reason why the right to make the appointments is claimed. The statement must be signed under oath (notarized) by the chief presiding officer, secretary or any other officer of the group or organization.
- 2.) A copy of the identification card which will be carried by the challengers the group or organization appoints. The identification card must have entry spaces for the challenger's name, the group's or organization's name, the precinct or precincts in which the challenger is authorized to serve and the signature of a recognized officer of the group or organization.

APPOINTMENT AUTHORIZATION APPLICATIONS SUBMITTED BY GROUPS AND ORGANIZATIONS: PROCESSING STEPS

A clerk or school board secretary receiving a challenger appointment authorization application from an organization or group is required to approve or deny the request and notify the group or organization of the decision *within two business days*. A clerk or school board secretary has the authority to deny a challenger appointment authorization application if the group or organization fails to demonstrate that it is qualified to appoint challengers.

If the application is denied, the group or organization may appeal the decision to the Secretary of State *within two business days after the receipt of the denial*. Upon the receipt of an appeal, the Secretary of State is required to render a decision on the appeal and notify the organization or group of the decision *within two business days*. Notification of the decision is also forwarded to the clerk or school board secretary who issued the application denial.

Before the opening of the polls, the clerk or school board secretary is required to notify all precincts in the jurisdiction of the groups and organizations that have gained the right to appoint challengers at the election.

CONDUCT

- Challengers must conduct themselves in an orderly manner at all times. A challenger can be expelled from the precinct for unnecessarily obstructing or delaying the work of the election inspectors; touching ballots, election materials or voting equipment; campaigning; or acting in a disorderly manner.
- Challenges may *not* be made indiscriminately or without good cause.
- A challenger is *not* permitted to campaign, distribute campaign literature or display any

campaign material (including campaign buttons) while in the polls.

- A challenger is expressly prohibited from threatening or intimidating voters entering the polling place, applying to vote, entering a voting station, voting or leaving the polling place.
- Those present in the polls (including all election inspectors and voters) are expressly prohibited from threatening or intimidating any challengers assigned to serve in the polling place.

RIGHTS OF CHALLENGERS

It is the duty of the precinct board to provide space for challengers which will enable them to observe all election procedures being carried out. In a voting precinct, challengers are permitted to position themselves behind the election inspectors' table. Challengers have the right to:

- Examine the voting equipment before the polls open and after the polls close.
- Observe each person offering to vote. (Challengers may *not* observe electors voting.)
- Observe the processing of voters.
- Bring to the precinct board's attention the improper handling of a ballot by a voter or an election inspector; that the 100 foot campaign restriction is being violated; or that any other election law or prescribed election procedure is being violated.
- Inspect the Applications to Vote, Poll Books, registration records and any other materials used to process voters at the polling place. (When exercising this right, challengers may *not* touch the Applications to Vote, Poll Books, registration records or other materials being used by the precinct board.)
- Inspect ballots (including absent voter ballots) as they are being counted. (When exercising this right, challengers may *not* touch the ballots.)
- Observe the recording of absent voter ballots on voting machines.
- Keep notes on the persons offering to vote, the election procedures being carried out and the actions of the precinct board.
- Remain in the precinct until the precinct board completes its work.

If two challengers are representing a political party, group or organization in the precinct, only *one* of the challengers may hold the authority to challenge at any give time. The challengers may alternate the authority to challenge at their discretion. The challengers must advise the precinct board each time the authority is alternated.

CHALLENGE PROCEDURE: “UNQUALIFIED VOTER”

If a challenger has *good reason to believe* that a person who offers to vote is not qualified to vote in the precinct, a challenge may be made immediately after the voter completes an Application to Vote. The challenge is directed to the chairperson of the precinct board. The chairperson of the precinct board or an election inspector designated by the chairperson is responsible for supervising the challenge to make sure that it is conducted promptly and courteously. The challenge proceeds as follows:

- 1.) After the challenge is made, the challenged person takes the oath printed below. The oath is administered by the chairperson of the precinct board or a designated election inspector.

“I swear (or affirm) that I will truly answer all questions put to me concerning my qualifications as a voter.”

- 2.) After the oath has been administered, the precinct chairperson or a designated election inspector may question the challenged voter. Election law stipulates that the questions be confined to the person’s qualifications as a voter (citizenship, age and residency).
- 3.) A challenged voter is permitted to vote a specially prepared “challenged ballot” if the answers given under oath prove that he or she is qualified to vote in the precinct. A challenged voter may *not* vote if he or she refuses to take the oath, refuses to answer appropriate questions under oath or is found to be not qualified to vote through the answers given under oath.
- 4.) A complete record of the challenge must be entered on the “CHALLENGED VOTERS” page in the Poll Book. The record must include a description of the election disparities or infractions complained of or believed to have occurred; the name of the person making the challenge; the time of the challenge; the name, address and telephone number of the person challenged; and any other pertinent information.

It merits emphasis that a challenger is not permitted to challenge a voter’s right to vote unless the challenger has *good reason to believe* that the elector is not eligible to vote in the precinct.

Proper challenges: A challenge is proper if it is based on information obtained by the challenger through a reliable source or means. For example, the challenger has obtained information that a particular voter 1.) is not a true resident of the jurisdiction 2.) has not yet attained 18 years of age 3.) is not a United States citizen or 4.) did not register to vote on or before the “close of registration” for the election at hand. A challenger should know the specific individuals he or she intends to challenge *before the polls open on election day*.

Improper challenges: A challenge is improper if it is *not* based on information obtained by the challenger through a reliable source or means. For example, a challenger does not have the right to issue a challenge based on an “impression” that the voter may not be eligible to vote in the

precinct due to the voter's manner of dress, inability to read or write English, perceived race or ethnic background or need for assistance with the voting process. Similarly, a challenger does not have the right to issue a challenge due to any physical or mental disability the voter may have or is perceived to have.

Every effort must be made to ensure that the challenge procedures are properly carried out in the polls as the abuse of the process can have serious consequences including the disenfranchisement of qualified electors, criminal violations and legal challenges over the election results. The precinct chairperson has the authority to expel challengers who abuse the challenge process.

CHALLENGE PROCEDURE: ABSENTEE VOTER AT POLLS

A challenger has the right to challenge any voter issued an absentee ballot who appears at the polls to vote on election day claiming that he or she never received the absentee ballot, lost the absentee ballot or destroyed the absentee ballot. If such a challenge is issued, the precinct inspector handling the challenge permits the voter to vote a specially prepared "challenged ballot" and enters a complete record of the challenge on the "CHALLENGED VOTERS" page in the Poll Book; the questioning of the voter is not required. (Note: A voter issued an absentee ballot who appears at the polls to vote on election day claiming that he or she never received an absentee ballot, lost his or her absentee ballot or destroyed his or her absentee ballot is required to sign an affidavit to that effect before voting in person. This requirement applies regardless of whether the voter is challenged.)

THE PREPARATION AND ISSUANCE OF CHALLENGED BALLOTS

A challenged voter must vote on a paper, punch card or optical scan ballot prepared as explained below; challenged voters are *not* permitted to vote on a voting machine or a direct recording electronic device as votes cast on such voting equipment cannot be retrieved at a later date if necessary.

- The election inspector handling the challenge writes the number appearing on the voter's ballot in pencil on the back of the ballot. If a punch card ballot is used, the number appearing on the voter's ballot is written in pencil on the secrecy envelope.
- After the ballot number is recorded in pencil on the ballot, the number is concealed with a slip of paper. The use of transparent tape and paper that matches the color of the ballot (or secrecy envelope if a punch card ballot is used) is recommended.
- The election inspector enters the voter's name in the Poll Book.

After completing the above steps, the election inspector issues the ballot to the voter. The voter

then votes the ballot in a voting station. After the voter has voted the ballot, the ballot is deposited in the ballot box under routine procedure. (If voting machines or direct recording electronic voting devices are used in the precinct, see below.)

A challenged ballot cannot be retrieved for examination after the election without an appropriate court order.

THE HANDLING OF CHALLENGED BALLOTS IN VOTING MACHINE AND DIRECT RECORDING ELECTRONIC PRECINCTS

If voting machines or direct recording electronic voting devices are used in the precinct, the election inspector handling the challenge has the voter place the ballot in an absent voter ballot return envelope; completes and signs the back of the envelope; directs the voter to sign the envelope; and writes the word “CHALLENGED” across the face of the envelope.

- If the jurisdiction does *not* use an absent voter counting board, the challenged ballot is processed with the absent voter ballots delivered to the precinct.
- If the jurisdiction uses an absent voter counting board, the election inspectors secure the absent voter ballot return envelope containing the challenged ballot and notify the election official in charge of the election. The election official in charge of the election is then responsible for arranging the delivery of the ballot to the absent voter counting board. The voter’s Application to Vote is retained in the precinct.

CHALLENGE PROCEDURE: ABSENT VOTER BALLOTS

If a challenger has reason to believe that an absent voter ballot has been submitted by a person who is not qualified to vote in the precinct, a challenge may be made as the ballot is being processed. If such a challenge is made, the election inspector handling the challenge writes the number appearing on the voter’s ballot in pencil on the back of the ballot (or secrecy envelope if a punch card ballot); conceals the number with a slip of paper; enters a complete record of the challenge on the “CHALLENGED VOTERS” page in the Poll Book; and proceeds with the routine processing and counting of the ballot.

CHALLENGE PROCEDURE: ACTIONS OF THE PRECINCT BOARD

If a challenger has reason to believe that the precinct board is not following election law, the actions of the precinct board may be challenged by consulting with the board chairperson. If the chairperson rejects the challenge, the challenger has the right to contact the election official in charge of the election on the matter at issue. The election inspectors must enter a complete record of the challenge in the Poll Book.

PENALTIES

Michigan election law provides penalties for the following infractions:

- A person who submits a challenger appointment authorization application on behalf of a group or organization that is not authorized to appoint challengers.
- A clerk or school board secretary who knowingly fails to perform the duties related to the challenger appointment process.
- A person who challenges a qualified elector for the purpose of annoying or delaying the voter.
- A challenged elector who gives false information regarding his or her qualifications to vote.
- An election official or precinct board that prevents a challenger from being present in the polls or refuses to provide a challenger with any conveniences needed for the performance of his or her duties.

POLL WATCHERS

An election is an open process that may be observed by any interested person. (However, note that candidates may not remain in the polling place after they have voted because of the possible conflict with the provisions which prohibit campaigning within 100 feet of the polls.) A person who wishes to observe the election process -- who is not a qualified election challenger -- is commonly called a "poll watcher." The qualifications, rights and duties of poll watchers and challengers are contrasted below:

- A challenger must be registered to vote in the State of Michigan; poll watchers do not have to meet this requirement.
- A challenger has the right to challenge a person's right to vote and the actions of the precinct board; a poll watcher does not have this authority.
- A challenger may sit behind the processing table; a poll watcher does not have this privilege. (Poll watchers must sit or stand in the "public area" of the polling place where they will not interfere with the voting process.)
- Challengers have a right to look at the Poll Book; poll watchers may look at the Poll Book at the discretion of the precinct board chairperson. A challenger or a poll watcher may *not* touch the Poll Book or any other voting records.
- A poll watcher who wishes to be present in an absent voter counting board must remain in

the room in which the absent voter counting board is working until the close of the polls (8:00 p.m.).

- A poll watcher who wishes to be present in an absent voter counting board is required to take and sign the following oath: “I (name) do solemnly swear (or affirm) that I shall not communicate in any way information relative to the processing or tallying of voters that may come to me while in this counting place until after the polls are closed.” The oath may be administered by any member of the absent voter counting board.

The equal treatment of competing interests is the cornerstone of fair elections! As a result, any special measures taken in the polls to provide challengers and poll watchers with information on the voters who have participated in the election must be administered in such a way as to ensure equal access to the information by all interested persons.

Authority granted under PA 116 of 1954
ED-2 (09/2003)
12,000 printed; total cost \$3,660.00; \$.305 ea.